

STADIO



Plain and Understandable Language & Financial Literacy

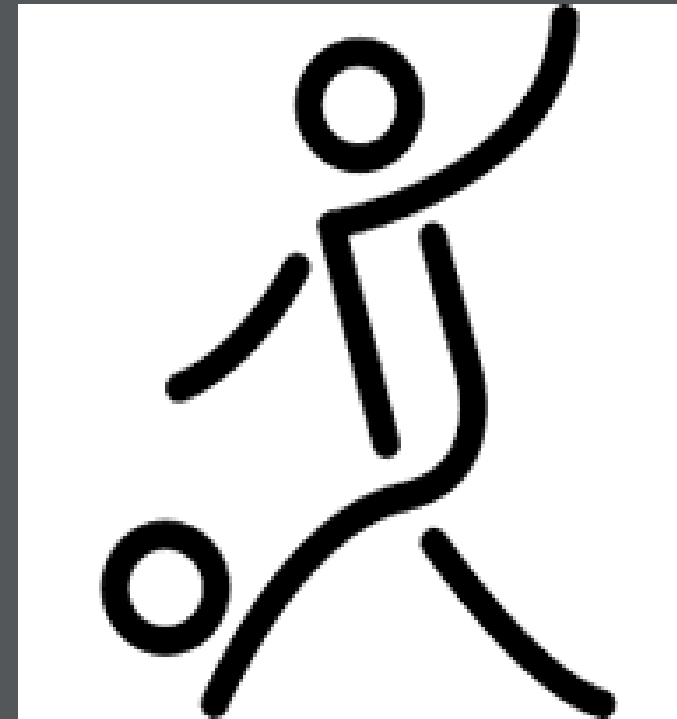
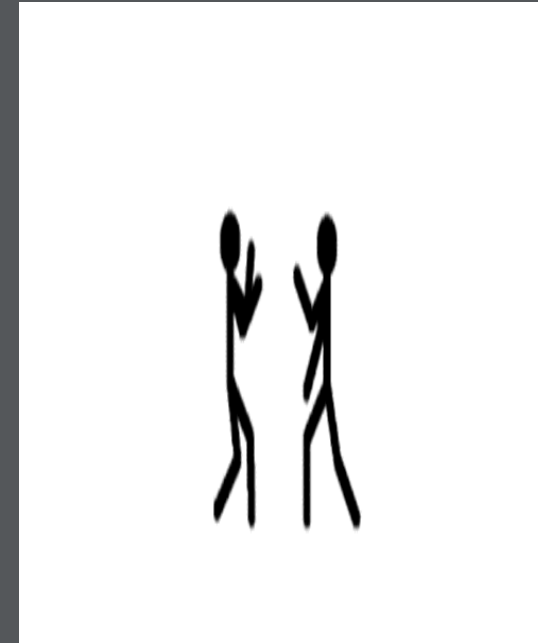
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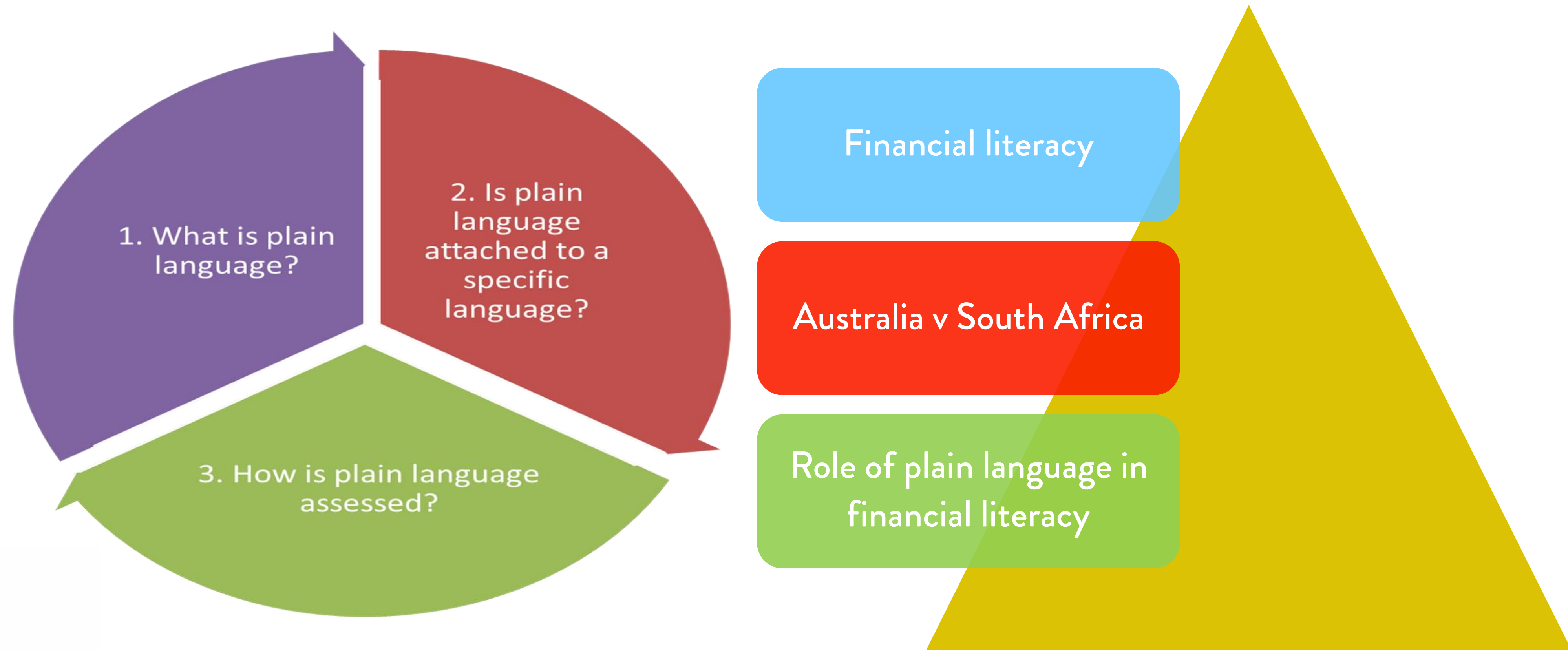
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PETER THE SOUTH AFRICAN CONSUMER



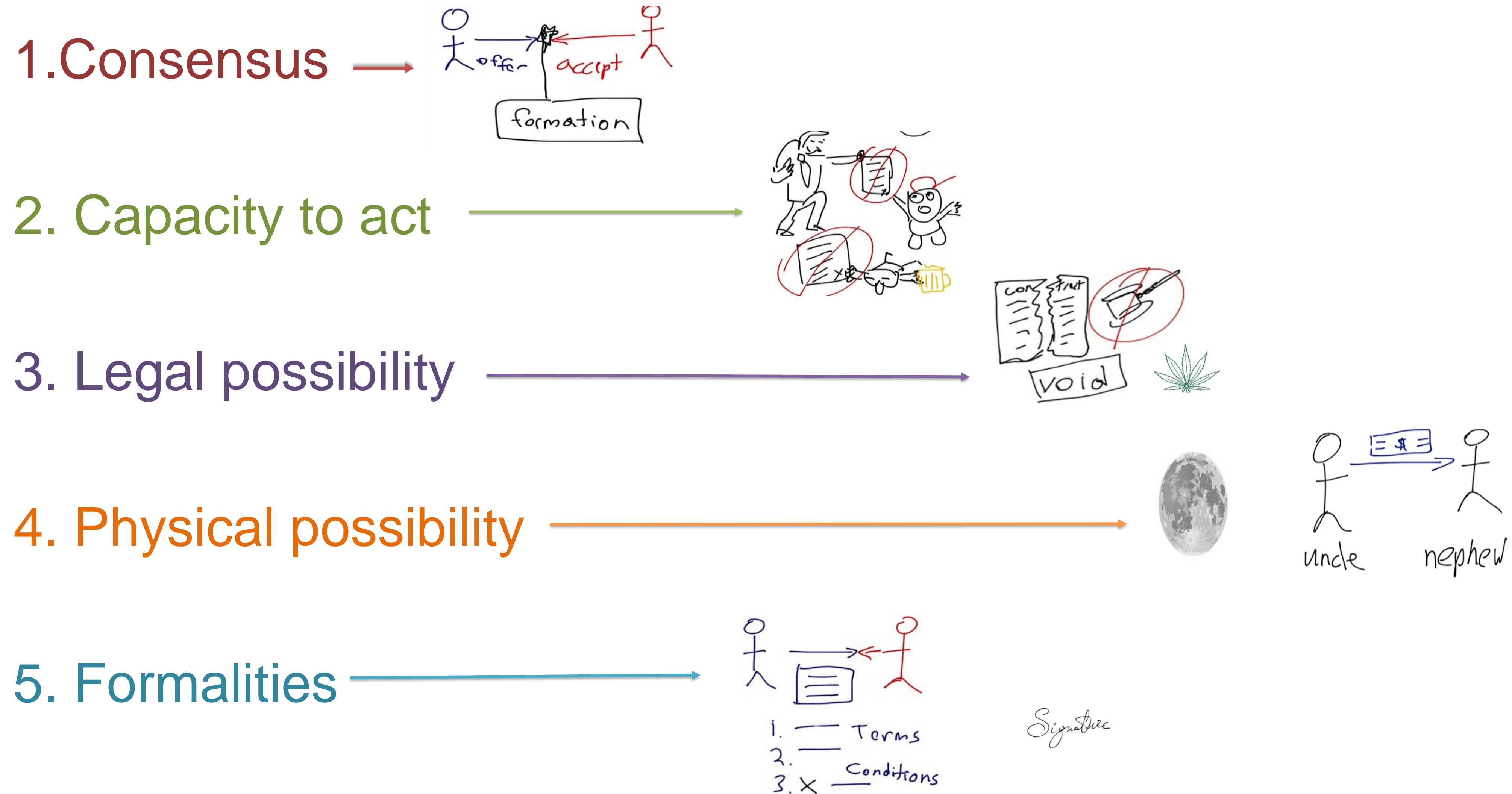
INTRODUCTION

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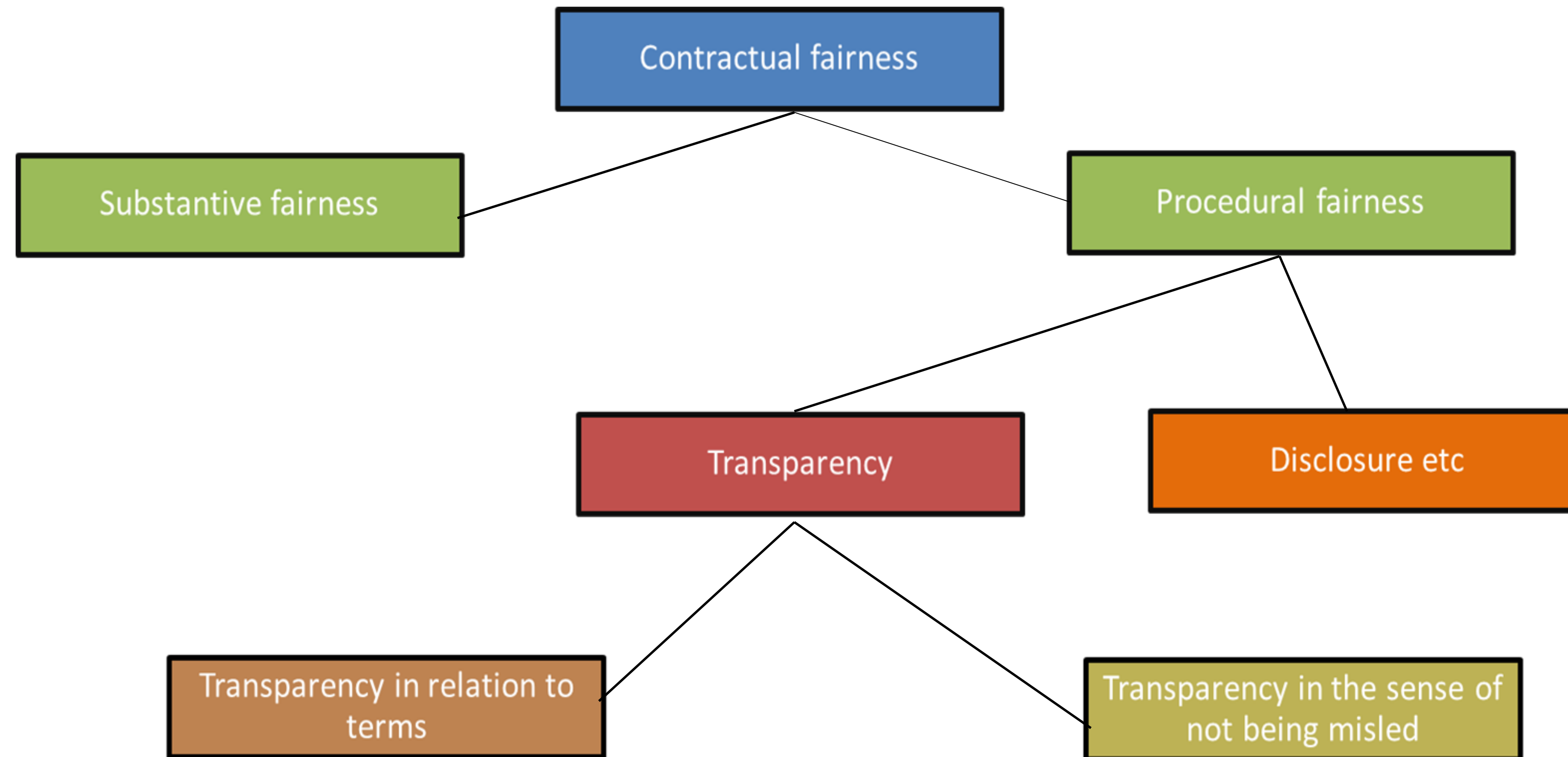
REQUIREMENTS FOR FORMATION OF A VALID CONTRACT

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HOW DOES FAIRNESS LEGISLATION WORK?

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SECTION 22 OF THE CONSUMER PROTECTION ACT 68 OF 2008

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- ‘(1) The producer of a notice, document or visual representation [document] that is required, in terms of this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation [document]—
- (a) in the form prescribed in terms of this Act or any other legislation, if any, for that notice, document or visual representation [document]; or
 - (b) in plain language, if no form has been prescribed for that notice, document or visual representation [document].
- (2) For the purposes of this Act, a notice, document or visual representation [document] is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation [document] is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation [document] without undue effort, having regard to—
- (a) the context, comprehensiveness and consistency of the notice, document or visual representation [document];
 - (b) the organisation, form and style of the notice, document or visual representation [document];
 - (c) the vocabulary, usage and sentence structure of the notice, document or visual representation [document]; and
 - (d) the use of any illustrations, examples, headings or other aids to reading and understanding.
- (3) The Commission may publish guidelines for methods of assessing whether a notice, document or visual representation [document] satisfies the requirements of subsection (1)(b).
- (4) Guidelines published in terms of subsection (3) may be published for public comment’.

STRUCTURE, PURPOSE AND INTERPRETATION OF S 22

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1. Plain language is embedded under the umbrella right of information and disclosure
2. S 2(1) - Every provision of the Act must be interpreted to give effect to the purposes of the Act
3. S 3 - Purposes of the Act:

‘(b) reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by consumers –

...

(iv) whose ability to read and comprehend any advertisement, agreement, mark, instruction, label, warning, notice or other visual representation is limited by reason of low literacy, vision impairment or limited fluency in the language in which the representation is produced, published or presented;



WHICH DOCUMENTS MUST BE IN PLAIN LANGUAGE?

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1. Any document required in terms of the Act or any other law should be in the prescribed form
2. If no form is prescribed, the document must be in plain language
3. Written consumer agreements



WHAT IS PLAIN LANGUAGE?

First part of the definition:

1. Language that enables an *ordinary consumer of the class of persons for whom a document is intended*
2. with *average literacy skills* and
3. minimal experience as a consumer of the relevant goods or services
4. to understand the *content, significance and import* of a document *without undue effort*

Second part of the definition: factors to be taken into account when determining whether a document is in plain language



‘...AN ORDINARY CONSUMER OF THE CLASS OF PERSONS FOR WHOM A DOCUMENT IS INTENDED...’

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- Ordinary consumers should be able to understand
- More than one set of contracts to be drafted for different target audiences
- Suppliers must know their target audience
- Predictability is an issue for drafters of contracts

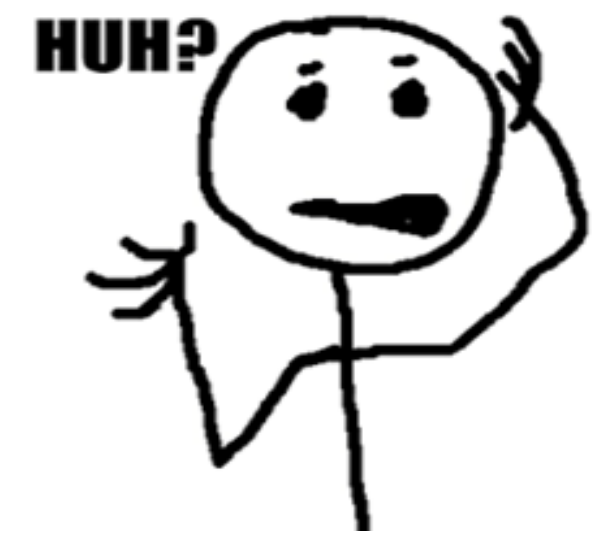


"To tell you the truth, I don't think the average consumer will notice. Run with it."

‘...AVERAGE LITERACY SKILLS...’

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- Documents must cater for the average SA consumer from the target audience
- Literacy statistics relevant? Yes/No
- ‘Literacy’ means basic reading and writing skills
- Is literacy attached to a specific language?
- Is literacy measured in only one SA language or the language of the consumer?
- S 4(3) – if a provision has more than one meaning, the meaning that best promotes consumer protection must be preferred



‘...MINIMAL EXPERIENCE AS A CONSUMER OF THE RELEVANT GOODS OR SERVICES...’

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- Drafter should write for first-time consumers
- Not the average consumer, not the consumer with no experience, but the consumer with ‘minimal experience’
- However, context of a document may also be considered: target audience may have experience



‘...CONTENT, SIGNIFICANCE AND IMPORT...’

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- Consumers must understand
 - . What the document says
 - . How it applies to them
 - . Its significance and
 - . Effect
- Consumers must understand the legal consequences of a document

WHAT COULD POSSIBLY GO
WRONG?

‘...UNDERSTAND ... WITHOUT UNDUE EFFORT...’

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- Undue = excessive
- A certain amount of effort does not make it undue
- If a consumer has to consult an advisor to understand a document the document will not be in plain language?



SECOND PART OF THE DEFINITION OF PLAIN LANGUAGE

Factors to be taken into account when determining whether a document is in plain language:

- ‘Context’
- ‘Comprehensiveness’
- ‘Consistency’
- ‘Organisation, form and style’
- ‘Vocabulary, usage and sentence structure’
- ‘Illustrations, examples, headings or other aids to reading and understanding’



MUST DOCUMENTS BE PROVIDED IN THE LANGUAGE OF THE CONSUMER?

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- S 63 of the National Credit Act – right to receive documents in consumer's language
- Consumer Protection Act does not have an official language provision
- Constitution – official language must enjoy parity of esteem
- *Lingua franca* of SA is English but most spoken languages in SA: isiZulu, Xhosa and Afrikaans
- What about foreigners in SA who do not understand any of the SA languages?
- How will suppliers comply with s 22 if consumers do not understand the language used in documents?
- Unconscionable conduct: abusing language inabilities



ASSESSMENT OF PLAIN LANGUAGE

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- S 22(3): National Consumer Commission may publish guidelines for methods of assessing whether document is in plain language
- No guidelines have been published
- Guidelines = pro-active compliance with plain language provisions



"Baxter...about this report...your punctuation, spelling and grammar are perfect. No one can understand it!"

PENNSYLVANIA PLAIN LANGUAGE CONSUMER CONTRACT ACT – VISUAL GUIDELINES

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1. Contract must have type size, line length, column-width margins
2. Spacing between lines and paragraphs must make contracts easy to read
3. Captions should be in bold
4. Ink should contrast sharply with paper



CONNECTICUT: ALTERNATIVE OBJECTIVE APPROACH

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1. Average words per sentence less than 22
2. No sentence may exceed 50 words
3. Average words per paragraph less than 75
4. No paragraph may exceed 150 words
5. Average syllables per word less than 1.55
6. Personal pronouns or names of parties to be used
7. No font small than 8 points
8. 0.5 cm space between paragraphs and sections
9. 1.3 cm page borders
10. Printed contracts: bold captions, 10 points font
11. Typewritten contracts: captioned sections and underlined captions
12. Average line length not more than 65 characters



CONCLUDING REMARKS: PLAIN LANGUAGE

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- Know the target audience and purpose of a document to comply with s 22
- Literacy level and choice of language form part of the context and have an impact on compliance with s 22
- Use of specific language has impact on question if a document is understandable
- Guidelines to assess whether a document is in plain language needed



FINANCIAL LITERACY



Define tomorrow.

FINANCIAL LITERACY

- In Australia there is an obligation to promote informed participation of financial consumers while in South Africa there is an obligation to educate consumers.
- The Australian obligation is concerned with the financial system as a whole while the South African obligation has generally been focused on general financial education as a tool to promote financial inclusion.
- Financial literacy is one among a number of strategies directed towards nudging changes in consumer behaviour. It sits between the old regulatory model which relies on disclosure of information for effective and rational decision-making and a newer regulatory model which takes into account individual's perceptions and behavioural biases and may seek to accommodate for these by imposing obligations on financial services providers beyond mere disclosure of information.
- Financial literacy is generally the ability to understand how money works, how a person can earn money or make it more. It specifically refers to the set of skills and knowledge that allows a person to make informed and effective decisions with all of their financial resources.
- There is no obligation for consumers to attain a minimum standard of literacy in credit, finance or insurance generally.

AUSTRALIA

- The Australian Securities and Investments Commission ('ASIC').
- In an earlier report, it pointed out that what people think they know is greater than what they actually know. People are less confident in investing, superannuation and retirement products and more confident about budgeting, credit, savings and debt.
- Found that consumers are faced with:
 - too much information and choice overload;
 - that the information they have to process is complex and the decisions they need to make are often complex and uncertain;
 - they are faced with time constraints and time pressures;
 - there are issues with both over-confidence and under-confidence; some people are impulsive and have self-control problems; and
 - the way in which information is framed or presented can impact on decision-making.
- Industry codes focused on informing consumers of their rights.
- Annual banking surveys, show, eg , there are important differences that impact on financial literacy: gender; age; education; household circumstances; financial knowledge; numeracy; and financial attitudes.
- Financial advice has been an ongoing issue for Australia. In one study 75% had consulted others for financial advice. Those consulted were accountants (39%), friends or family (35%), bank managers or employees (30%) and financial planners/advisers (20%).
- Despite seeking advice, there is a low trust in financial professionals.
- To make comparisons of financial products and services users go to: websites of financial institutions and then secondly choice magazine website.
- Generally consumer knew how to lodge complaints and general awareness of their consumer rights.



SOUTH AFRICA

- In the past the South African Government, private sector providers, and non-governmental-organisations ('NGOs') had all undertaken consumer financial education and a lot of money was spent on it.
- It soon became clear that the majority of these initial programmes had been either inappropriate, marketing focused or were a mere duplication of existing programmes, which had limited the effectiveness of outreach.
- In an attempt to address this insufficiency, the South African Financial Services Board ('FSB'), established by the *Financial Services Board Act* of 1990, was specifically tasked in 2000 under the *Financial Services Board Act* to 'provide, promote or otherwise support financial education, awareness and confidence regarding financial products, institutions and services'.
- The FSB's Board accepted this strategy in October 2001. It followed international examples in Australia and the United Kingdom.
- FSB had its main achievements being through support from the South African Insurance Association's (ie, the representative body for short-term insurance industry) consumer education work under the South African Financial Sector Charter and various other smaller educational projects.
- Due to the Apartheid regime and discrimination that prevailed in South African for many years a complicated financial sector developed.
- With the abolishment of Apartheid a number of initiatives have been launched in South Africa to improve financial inclusion. The Financial Sector Charter and the Broad-based Black Economic Empowerment Act of 2003 ('BBBEE') Act have been the main pillars of transformation in the financial sector.
- Charter focused on 'consumer education'. The Charter was followed up by the Financial Sector Code for Black Economic Empowerment, which came into effect on 1 January 2012. The Code also placed strong emphasis on consumer education.



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- In 2012 the FSB conducted its first national baseline survey of financial literacy in South Africa. Survey focused on 4 core domains, namely (i) financial control; (ii) financial planning; (iii) choosing financial products; and (iii) knowledge and understanding. Conclusion was that a large proportion of the population were not adequately equipped to make sound financial decisions. The findings of the study therefore supported comprehensive and aggressive as well as multi-faceted programmes of consumer financial education.
- Thus FSB identified the formal education sector as a key area for creating awareness about financial literacy and initiated campaigns to promote programmes enabling learners to exit the school system with sufficient information and skills to enable them to take responsibility for their financial future and make considered decisions.
- The FSB and the South African Insurance Association developed a learning resource for Grades 10 to 12 teachers of the school subject mathematical literacy.
- In 2014 the FSB introduced its first consumer website www.mylifemymoney.co.za, which forms part of the FSB's mandate to provide guidance to consumers in order to make better financial choices and to live a financially successful life. The *MyLifeMyMoney* website alerts consumers to the facts so that informed decisions can be made. The website introduced so-called Life Stages guiding consumers through every stage of life.
- FSB became the Financial Sector Conduct Authority ('FSCA') (when the Twin Peaks model was accepted - Financial Sector Regulation Act).
- Introduction of the National Credit Act 34 of 2005 – Consumer credit market regulated by the National Credit Regulator
- South Africa moved to the Twin Peaks model: Financial Sector Conduct Authority ('FSCA') and the Prudential Authority (South African Reserve Bank).

SOUTH AFRICA

- With the introduction of the National Credit Act in 2007 the level of financial inclusion for the low-income, particularly, historically disadvantaged consumers increased. The National Credit Regulator is specifically responsible for increasing knowledge of the nature and dynamics of the consumer-credit industry, promoting public awareness of the provisions of the Act and by implementing education. Do this by way of:
 - placing important information and consumer tips on its website;
 - holding educational workshops;
 - presenting at conferences;
 - communicating with the industry;
 - providing educational brochures in all eleven South African official languages in plain language;
 - erecting educational bill boards on major highways and roads;
 - running educational adverts and campaigns; and
 - holding media (television and radio) interviews.
- The previous consumer-credit legislation in South Africa did not command credit providers to make proper disclosures to consumers. It required that only basic disclosures had to be made to the consumers.
- Role of disclosure (eg, info beforehand and documents in plain language) important for credit and insurance legislation.
- **THE ROLE AND VALUE OF DISCLOSURE IS VITAL, BUT IT NEEDS TO BE STRESSED THAT DISCLOSURE IS INEFFECTIVE IF THERE ARE LOW LEVELS OF FINANCIAL LITERACY.**
- The focus and reliance of credit and insurance legislation on disclosure as a tool to protect and educate consumers, rather than it focussing and relying on promoting financial literacy amongst consumers is a concern.
- Surveys in South Africa also showed that credit consumers have a tendency to obtain their financial information mainly through television, radio, friends and internet.



ROLE OF INDUSTRY PLAYERS

- Although other industry players, eg, financial institutions, banks, other credit providers, credit bureaus, insurers and ombuds are not statutorily obliged to educate consumer or promote financial literacy as a whole amongst consumers they often undertake initiatives to do so as part of their social (and corporate) responsibility and/or responsibilities ,eg, in terms of Charters and/or Codes.
- The banking industry, by way of the Banking Association South Africa (an industry body representing all registered banks in South Africa – South African and international banks) developed a Code of Banking Practice, to which the banks subscribe and which is regularly updated.

IMPORTANCE OF SURVEYS

- Finmark Trust - established in March 2002 with funding from the United Kingdom's Department for International Development. FinScope Consumer Surveys in South Africa since 2002.
- The surveys define financial inclusion as adults (16 years and older) who have/use financial products and/or services formally by financial institutions (banks and non-banks) and/or informally (ie, financial products and/or services which are not regulated, eg, farmer associations, savings clubs/groups, private money-lenders).
- The FinScope Survey revealed that in 2004 there were only about 46% of the population in South Africa that were banked, while more recently, the FinScope SA 2018 Fact Sheet estimated that 80% of adults are banked.
- Surveys divulged that there were notable growth since 2004 in the entrance of pension funds, provident funds, and retirement annuities. Increase of financial products covering risk (eg, life assurance, funeral cover, asset insurance, health insurance). There was also growth in membership of informal savings or investment groups and stokvels. It, however, showed that long-term savings was still a challenge for the majority of South Africans.
- Generally since 2004 to date large improvement on financial inclusion so that people could access appropriate and affordable financial services.
- Surveys showed adults had two or more funeral cover from different providers, while innovative and product consolidations for funeral cover could greatly increase the benefits and possibly reduce the monthly premiums.

CONCLUDING REMARKS: FINANCIAL LITERACY

- Today the FSCA's obligation include providing financial customers and potential financial customers with financial education programs and promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions. The FSCA's obligation is therefore concerned with the financial market as a whole.
- Legislation places a duty on the regulators to educate consumers, but does not generally place a co-relative duty on consumers to get a minimum standard of education or literacy in credit, insurance and finance over-all. At present consumers are largely only statutorily obliged to provide correct financial information to credit providers, financial institutions and insurers.
- Due to South Africa's history, it is clear that the duty to educate in South Africa was centralised around improving the financial inclusion of South Africans, rather than improving informed participation amongst South Africans.
- Although many strides have been made in improving financial inclusion in South Africa there are still many financially excluded consumers.
- Importance of and role of plain language in consumer's understanding of complex financial products.
- It is expected (or rather hoped) that now that South Africa has achieved more financial inclusion, that the financial regulators and industry will start to shift their focus to promoting informed participation and creating truly financial literate consumers.
- Hopefully the Financial Sector Regulation Act will bring along this shift in regulators' and financial institutions' focus.
- It is acknowledged that there is no one-size-fits-all model for consumer education and literacy programs, especially in a country such as South Africa with its hybrid of consumers with different levels of financial literacy.
- See also Pearson, G, Stoop, PN and Kelly-Louw, M 'Balancing responsibilities – financial literacy' (2017) 20 Potchefstroom Electronic Law Journal (available at <https://doi.org/10.17159/1727-3781/2017/v20i0a1378>)





THANK YOU
ENKOSI
RE ALEBOGA
DANKIE

